

Judge's Quick Guide to Foreign Language Access



Michigan Supreme Court
State Court Administrative Office

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Authority

“[A] court is required to provide an interpreter for a party or witness upon request or if the court determines one is needed for either the party or the witness to meaningfully participate. LEP services are provided to all who have a need for them[.]” [ADM File No. 2012-03](#).

“Limited English proficient” person means a person who does not speak English as his or her primary language, and who has a limited or basic ability to read, speak, write, or understand English, and by reason of his or her limitations, is not able to understand and meaningfully participate in the court process.” [Administrative Order No. 2013-8](#).

Credentialing

MCR 1.111(A)(4) and MCR 1.111(A)(6) reflect a hierarchy of foreign language interpreters based on skill and qualification:

Certified court interpreters (MCR 1.111[A][4]) have:

- Passed the written English exam administered by the SCAO
- Passed a foreign language interpreter test (three-part oral exam) administered by the State Court Administrative Office (SCAO) or a similar state or federal test approved by the State Court Administrator.
- Met all the requirements established by the state court administrator for this interpreter classification.
- Registered with the SCAO.

Qualified court interpreters (MCR 1.111(A)(6)(a)) have:

- Passed the written English exam administered by the SCAO.
- Passed the consecutive portion of a foreign language interpreter test administered by the SCAO or a similar state or federal approved by the SCA and is actively engaged in becoming certified.
- Met all the requirements established by the state court administrator for this interpreter classification.
- Been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, and
- Registered with the SCAO.

Interpreter firms that provide in-person interpretation (MCR 1.11[A][6][b]) have:

- Registered with the SCAO, both the entity and person.
- Met all the requirements established by the state court administrator for this interpreter classification, and
- Determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services.

Remote Interpreter Firms (MCR 1.111(A)(6)(c)) have:

- Registered with the SCAO.
- Met all the requirements and standards established by the state court administrator for this interpreter classification, and

- Determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services.

Languages of Limited Diffusion (LLDs)

The National Center for State Courts is the agency responsible for creating certification testing in the various languages. However, not all spoken languages have certification tests available. Those languages are called Languages of Limited Diffusion (LLDs) or Languages Other Than Spanish or (LOTS). Without certification tests for every language, the court must use a qualified interpreter and conduct appropriate voir dire to determine their qualifications.

Voir Dire

The following questions may assist a judge in determining whether a qualified interpreter is capable of interpretation in a court proceeding:

Skill-based questions:

- Do you have any training or credentials as an interpreter?
- What is your native language?
- What was the highest grade you completed in school?
- Have you spent any time in a country where this language is commonly spoken?
- Did you formally study the non-native language in school? To what extent?
- Do you know the words likely to be used, legal or otherwise, in both languages?
- Have you had an opportunity to speak with the non-English speaking person informally? (If not, consider providing an opportunity now.)
 - Based on your discussion with the non-English speaking person, were there any communication problems? (Note: Pay attention to the interaction and each person's facial clues to gauge understanding.)
 - Are you familiar with the words used by, and speaking patterns of, all speakers at the hearing?
- Can you interpret simultaneously (i.e., listen to one language and orally interpret in the other language, even though the speaker has not paused – as in an opening statement)?
- Can you interpret consecutively (i.e., listen to one language and orally interpret in the other language during a speaker's pause – as in when an attorney questions a witness)?
- Have you interpreted in any non-court settings?
- Have you ever had your interpreting skills evaluated?
- Has a judge ever allowed you to interpret in court?
- Have you had training in professional ethics for court interpreters?
- Are you familiar with the Code of Professional Conduct for Foreign Language Interpreters in Michigan Courts?

Conflict of interest questions:

- Have you ever been disqualified from interpreting in any court or administrative hearing?
- Are you employed or otherwise compensated by a business owned or controlled by any party or a witness?
- Are you a friend, family member, or household member of any party or witness?
- Are you a potential witness in this matter?
- Are you a law enforcement officer? If so, in which jurisdiction?
- Do you have a pecuniary (financial) or other interest in the outcome of the case?

- Do you know of any reason why your appointment would create a conflict of interest, perceived conflict of interest, or any appearance of impropriety?
- Are you aware of any reason your appointment would fail either to protect a party's rights or to ensure the integrity of the proceedings?

This series is not meant to be exhaustive, but rather is a starting point to engage the interpreter in a dialogue about his or her qualifications.

Appointment

Mandatory – MCR 1.111(B)(1)

If a person requests a foreign language interpreter in any criminal, civil, probate, or family division case and if the court determines such service is necessary for meaningful participation, or if the court determines on its own that an interpreter is necessary for meaningful participation, the court shall appoint an interpreter if the person is a party or witness in the case.

Discretionary – MCR 1.111(B)(2)

A court may appoint an interpreter for an interested party or someone other than a witness who has a substantial interest in the case or court proceeding.

Waiver – MCR 1.111(C)

A person can waive the right to a foreign language interpreter unless the court determines an interpreter is required to protect a person's rights and the integrity of the case or court proceedings. A waiver of the right must be made on the record and state the waiver is made knowingly and voluntarily.

Selection

The court must appoint a certified interpreter if one is reasonably available. If not, the court may appoint a qualified interpreter. [MCR 1.111\(F\)\(1\)](#). This rule need not be followed in the instance of placing a waiver on the record.

Oath/Affirmation

At the beginning of the proceeding, “The court shall administer an oath or affirmation . . . substantially conforming to the following: *Do you solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?*” [MCR 1.111\(G\)](#).

If an interpreter is employed by the court, an oath may be administered at the time of initiating employment and kept on file as proof of having administered the oath attesting to following these rules in every court proceeding they are called to interpret.

Best Practices

Direct Speech in Legal Proceedings

To ensure creation of a clear, unambiguous, and meaningful record, the interpreter must employ direct speech. Direct speech means that everyone should direct everything said to each other, exactly as if there were no language barrier. The interpreter interprets and speaks the LEP individual's message in another language, but says it in the first person in English, thus sounding as if the original message was initiated by the LEP individual in English. Direct speech ensures everyone in the courtroom hears the LEP individual's first-person words. The following are examples of correct and incorrect direct speech:

CORRECT	INCORRECT
Judge: "Please state your name for the record."	Judge: "Please ask him to state his name for the record."
Interpreter (in foreign language): "Please state your name for the record."	Interpreter (in foreign language): "He's asking you to state your name for the record."

When Third Person is Appropriate

There are times when using the third person is appropriate. Proper third-person self-reference by interpreters eliminates possible ambiguities and helps to maintain the accuracy of the record. When interpreters need to speak directly to the judge on their own behalf, rather than interpreting the words of someone else, they should always refer to themselves in the third person. The following are examples of correct and incorrect uses of third person speech:

CORRECT	INCORRECT
Interpreter: "Your Honor, the interpreter requests a repetition. The interpreter did not hear the question."	Interpreter: "I'm sorry, but I did not hear the question."

Instructions to Parties in the Courtroom

After the oath has been administered to an interpreter, the court should provide the following instructions to all parties in the courtroom on the interpreter's role:

An interpreter will be assisting the court throughout these proceedings, and those present should know what the interpreter can and cannot do. The interpreter's only function is to assist the LEP individual to communicate effectively with the court, the attorneys, and other parties in the case. The interpreter is not a party in this case, has no interest in this case, and is neutral. The interpreter is prohibited from giving advice, legal or otherwise.

Interpreters speak in the first person to ensure the court record accurately reflects the party's statements and not the interpreter's conclusion.

The interpreter will not be asked questions and will not answer questions, but rather will only interpret them.

If a person who is using the services of the interpreter has any questions, those questions must be directed to the court, attorney, witness, or party to the case through the interpreter. If anyone cannot understand or communicate effectively with the interpreter, that person should tell the court. Does anyone have any questions about the role or responsibilities of the interpreter?

Instructions to a Witness

Before a witness begins his or her testimony, the court should provide the following instruction:

I want you to understand the role of the interpreter. The interpreter is here only to interpret the questions you will be asked and to interpret your answers. The interpreter will interpret only what is said and will not add, omit, or summarize anything.

The interpreter will interpret into English everything you say in your language, so do not say anything you do not want everyone to hear.

You are here to listen and/or give testimony to this court. When speaking, please speak directly to the attorney or to me. Do not ask the interpreter for advice. If you do not understand the interpreter, please tell me. If you need a question answered or repeated, tell me. Wait until the entire question has been interpreted before you answer. Do you have any questions?

Do you understand the interpreter?

Instructions to a Jury

Before proceedings begin, the court should use the following when advising jury members of their role and obligation:

This court seeks a fair trial for all, regardless of the language they speak and regardless of how well they may or may not speak English. Therefore, do not allow the fact that the party requires an interpreter to influence you in any way. Although some of you may know the non-English language being used, it is important that all jurors consider the same evidence. You should not rely in any way on any knowledge that you may have of the language spoken; your consideration of the testimony and/or transcripts should be based only on English interpretation of the evidence introduced in the trial.

Minimizing Errors During Interpreted Proceedings

Types of Interpretation

The court may encounter any one of these types of interpretation methods being used during the course of a court proceeding.

[Simultaneous interpretation](#) is the oral interpretation in the second language as the statements are made.

Consecutive interpretation is the oral interpretation in the second language after a pause between completed statements.

Sight translation is the oral rendering of a document in the second language.

Minimizing Errors

Courts should be aware of and make provisions for dealing with interpreter fatigue. Although interpreting may seem effortless to others, it is a highly demanding and mentally taxing task. After long periods of uninterrupted interpreting, interpreters may experience fatigue, which, although unnoticeable at times, may have a negative impact on the interpretation. When fatigued, the interpreter is more susceptible to committing serious errors. Other situations may also arise requiring the judge to interrupt the court proceedings in order to minimize errors. These may include:

- When the court perceives the interpreter is having difficulty hearing a speaker, the court should ask the person to speak more loudly or more clearly.
- When the court perceives the interpreter is having difficulty hearing or being heard, the court should permit the interpreter to move to a location where audibility is better.
- A court may require the use of audio equipment for participants in interpreted proceedings, not only to enhance the general audibility of testimony, but also to ensure a clear record. When the court is informed or is aware that the equipment may be malfunctioning, the court should replace the equipment or make alternate arrangements for the hearing.
- When the court perceives attorneys or witnesses speak too rapidly for the interpreter to keep up, the court should instruct the participants to speak more slowly.
- When the court perceives the interpreter has a problem interpreting a concept or idea, the court should instruct counsel to rephrase the question using plain English, where possible, or make it more specific.
- When the court sees more than one person is speaking at the same time, the court should instruct the speakers to speak one at a time, allowing the interpreter to interpret accurately.
- When the court uses a remote interpreter, the court should summarize what needs to be accomplished at the hearing and give any special instructions to the interpreter.
- The court should never assume the interpreter, or the LEP individual, knows more about the court or its procedures than the judge tells them.
- When the court is leading the conversation and giving specific questions to the interpreter to relay, ask one question or group of related questions at a time. Allow the interpreter to interpret that into the target language before continuing to the next question(s).

- When the court is facilitating the conversation, the court should speak directly to the limited English speaker.

Monitoring Interpreter Performance

Rate of Speech: The court should monitor the rate of speech of all court participants, not only out of consideration for the interpreter, but also for the benefit of everyone listening to the interpretation. Interpreters must interpret at a faster speed than what is spoken in order to keep up with the speaker, especially since some languages require more words in the target language than in English to express the same messages.

Side Conversations: Even if the court is not able to speak the language being interpreted, the court should monitor certain interpreter behaviors. Except for a short initial conversation for the purpose of establishing that adequate communication may take place, interpreters should not converse with parties or witnesses. If the court observes this happening, the interpreter should be reminded that such conversations are prohibited.

The Silent Interpreter: Interpreters should be interpreting everything spoken in the courtroom. They are not permitted to interpret only what they deem to be important. Consequently, if the interpreter sits silently during a conversation, testimony, or other spoken event, the court must remind the interpreter of the duty to interpret everything an English-speaking litigant could hear.

Removal of an Interpreter

If at any time during the course of proceedings, it becomes apparent the interpreter has violated an ethical obligation or is unable to communicate effectively with the presiding judicial officers, attorneys, parties, or witnesses, the court should dismiss the interpreter and obtain the services of another interpreter. If the removal of an interpreter is necessary or if it is found that the interpreter may have violated the code of conduct,

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FLI/Documents/CodeOfProfessionalConduct.pdf>, a grievance may be filed against that interpreter by any person. Further information on the grievance process can be obtained through your court's language access coordinator or at

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FLI/Documents/ComplaintFormAndInstructions-fillable.pdf>.

Request for Review

Any denial of appointment of a foreign language interpreter must be made in the form of a written order. An LEP individual may immediately request a review of a denial of appointment or an order assessing costs for the provision of an appointed foreign language interpreter. The request must be made within 56 days of the issuance of the written order. The chief judge shall decide the request for review de novo. Where the denial is made by the chief judge (such as in a one judge court), the court shall refer the matter to the state court administrator for assignment to another judge. A pending request stays litigation and must be decided in an expedited fashion. No motion fee is required.

Costs

If a party is "financially able to pay for interpretation costs" the court may order the party to reimburse the court for payment of interpretation costs. "A person is '**financially able to pay for interpretation costs**' if the court determines that requiring reimbursement of interpreter costs will not pose an unreasonable burden on the person's ability to have meaningful access to the court." [MCR 1.111\(A\)\(3\)](#). Financial ability to pay for interpreter costs is defined as: "(a) the person's family or household income is greater than 125 percent of the federal poverty level; and (b) an assessment of interpreter costs at the conclusion of litigation would not unreasonably impede the person's ability to defend or pursue the claims involved in the matter." [MCR 1.111\(A\)\(4\)](#).

Under the rule, only parties who are able to pay for costs are subject to reimburse them at the conclusion of the matter. [ADM File No. 2012-03](#).

The trial courts are responsible for the payment of interpreters and the collection of interpreter fees, if the court orders a party to pay them.

Resources

The resources referenced by links in this section can provide more detail on topics than could be provided comprehensively in this manual. This section also includes relevant legal authority references.

Legal Authority

Michigan

MCR 1.111:

[http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/Documents/CHAPTER%201.%20GENERAL%20PROVISIONS%20\(entire%20chapter\).pdf](http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/Documents/CHAPTER%201.%20GENERAL%20PROVISIONS%20(entire%20chapter).pdf)

MCR 8.127:

<http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/Documents/subchapters/Subchapter%2008.100%20General%20Administrative%20Orders.pdf>

Youtube clips and their associated links from *Federal Court Interpreter Orientation Manual and Glossary*

- Right to Court Interpreter
<http://www.youtube.com/watch?v=9JjWwaJuNWM&list=PL4bcxoLSIaXfPvX9FXws4S6XirPhUObBQ&index=1>
- Voir Dire
<http://www.youtube.com/watch?v=Ylq0A0NMtuk&list=PL4bcxoLSIaXfPvX9FXws4S6XirPhUObBQ>
- Simultaneous and Consecutive Interpreting

http://www.youtube.com/watch?v=Y7N_Fslb5a4&list=PL4bcxoLSIaXfPvX9FXws4S6XirPhUObBQ

- Example of Consecutive Interpreting
<http://www.youtube.com/watch?v=tFsKulFcauY&list=PL4bcxoLSIaXfPvX9FXws4S6XirPhUObBQ>
- Team Interpreting
<http://www.youtube.com/watch?v=aNXQOVABk2c&list=PL4bcxoLSIaXfPvX9FXws4S6XirPhUObBQ>

For more information on language access resources provided in a single location by the SCAO, please visit:

<http://courts.mi.gov/Administration/admin/op/access/Pages/Language-Access-Resources.aspx>